

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES KOOMRUIAN, JR.

Appeal No. 98-2655
Application 08/698,743¹

ON BRIEF

Before ABRAMS, FRANKFORT, and STAAB, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 1 and 4 through 6 as amended subsequent to the final rejection in a paper filed December 1, 1997 (Paper No. 9). Claims 1 and 4 through 6 are all of the claims remaining

¹ Application for patent filed August 16, 1996.

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in this application, claims 2, 3 and 7 through 12 having been canceled.

Appellant's invention relates to a container device for disinfecting and storing contact lenses wherein the cap of the container includes at least one aperture to serve as a vent and a gas-permeable, liquid-impermeable membrane fixed to the internal surface of the cap and positioned so as to cover any aperture therein. Independent claim 1 is representative of the subject matter on appeal and a copy of that claim may be found in Appendix A of appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Dubois et al. (Dubois) 1979	4,136,796	Jan. 30,
Su et al. (Su) 1989	4,889,693	Dec. 26,
Iba et al. (Iba) 1992	5,143,104	Sep. 1,

Claims 1, 4 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Iba in view of Dubois. According to the examiner

"Iba '104 discloses an apparatus for storing and cleaning contact lenses comprising a container (12) including an open end, a lens holding means (18, 20, 22), a cap (14) for sealably covering the open end of the container having at least one vent hole (26) and a gas-permeable, liquid-impermeable membrane (16) having an internal void (36) which fixed [sic] to the internal surface of the cap and positioned to cover all apertures. Iba '104 also discloses all the other limitations of the claims except for the gas-permeable, liquid-impermeable membrane being welded to the internal surface of the cap so that the membrane can't become dislodged, allowing the cap to leak at the vent holes. Dubois '796 discloses a container (10) comprising a body (12) and a top closure (16) having a vented closure (20) to permit the venting of gasses within the container and avoid pressure buildup while preventing any liquid from discharging from the container. The closure includes a gas-permeable, liquid-impermeable membrane (54) attached to the plug (42) in any number of ways including by hot welding (column 2, lines 57-68 and column 3, lines 1-3, and Figures 1, 4 and 5). It would have been obvious to one having skill in the art in view of Dubois '796 to modify the apparatus of Iba '104 so the membrane is more securely attached to the internal surface of the cap by any conventional method such as welding to prevent the membrane from falling off the cap and allowing undesired leakage" (answer, pages 4-5).

Claim 5 stands rejected under 35 U.S.C. § 103 as being unpatentable over Iba and Dubois as applied to claim 1 above, and further in view of Su.

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Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's answer (Paper No. 12, mailed March 10, 1998) for the examiner's complete reasoning in support of the rejections, and to appellant's brief (Paper No. 11, filed February 5, 1998) and reply brief (Paper No. 13, filed April 13, 1998) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review we have reached the determinations which follow.

Looking to the examiner's prior art rejection of appealed claims 1, 4 and 6 under 35 U.S.C. § 103, as appellant has on pages 2 and 3 of the reply brief, we note that the examiner's findings (answer, pages 4-5) with regard to Iba are factually incorrect, in that Iba does not disclose, teach or suggest a "gas-permeable, liquid-impermeable membrane" like that required in claim 1 on appeal. Instead, Iba discloses a resilient gasket (16) that includes "H" shaped slits or perforations (34) therein, which slits define vent openings when subjected to a level of gas pressure sufficient to deflect the flaps (35) thereof. Moreover, at column 4, lines 41-45, of Iba, it is noted that any liquid that leaks or is forced through the flaps during venting, will be contained within the recess defined by peripheral edge or shoulder (30), thus clearly demonstrating that the gasket (16) is not "liquid-impermeable."

Accordingly, even if it would have been obvious to one of ordinary skill in the art at the time of appellant's invention (based on Dubois) to weld or glue the membrane (16) of Iba to the internal surface of the cap so as to more securely hold

the gasket to the cap and thereby prevent the gasket from falling off the cap and allowing undesired leakage, as is urged by the examiner in the answer, such a combination of the applied references would not result in the device as set forth in appellant's independent claim 1 on appeal, since the combination would still lack a "gas-permeable, liquid-impermeable membrane." For that reason, we will not sustain the examiner's rejection of claims 1, 4 and 6 on appeal under 35 U.S.C. § 103.

With regard to the examiner's rejection of claim 5 under 35 U.S.C. § 103 based on Iba, Dubois and Su, we share appellant's view as expressed on pages 4-5 of the reply brief, that the examiner's proposed combination of these patents would likewise not have suggested appellant's presently claimed invention to the ordinarily skilled worker. In fact, it appears that Su (col. 1) teaches away from utilizing a gas-permeable, liquid-impermeable membrane in a vented lens disinfecting appliance because of clogging of the membrane pores during repeated uses of such a

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structure. Thus, the examiner's rejection of claim 5 under
35 U.S.C. § 103 will likewise not be sustained.

As is apparent from the foregoing, the decision of the
examiner rejecting claims 1, 4, 5 and 6 of the present
application is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
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LAWRENCE J. STAAB)	
Administrative Patent Judge)	

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